Supreme Court, U.S.
FILED

091579 JUN 10 2010

OFFICE OF THE CLERK

No. _____

IN THE
Supreme Court of the United States

October Term 2010

Napoleon Spear,

Petitioner,

v.

General Motors Corporation a/k/a
General Motors Company

Respondent.

Petition for Writ of Certiorari to the Court of Appeals of Maryland

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PETITION FOR WRIT OF CERTIORARI

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Counsel for Petitioner

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QUESTIONS PRESENTED

This petition raises an important issue concerning the following Federal questions to wit:

1. Did the Maryland Court of Appeals and the Maryland Special Court of Appeals violated the due process clauses of under the 5th, and 14th, amendments to the United States Constitution when they affirmed the Circuit Court for Baltimore City by finding that the Circuit Court erred in dismissing Petitioner's case in that Court, yet instead of reversing such error, affirmed the Circuit Court for a reason that was stated in the transcript of the proceeding and not for what the Circuit Court actually rule upon in its final order?

2. May a State Supreme Court or a State Court of Appeals affirm a lower State trial Court on any ground not stated in the final order or on any ground not appealed by the parties and where an appellant had no reasonable opportunity to appeal or address such ground in the State Appellate Court in clear violation of an appellant rights to due process under both the 5th, and 14th, amendments to the United States Constitution?

LIST OF THE PARTIES TO THE PROCEEDINGS

Mr. Napoleon Spear is the petitioner in this case and he is proceeding in this matter pro se as a matter of right. Petitioner is a former employee of the Respondent. The Respondent in this matter is General Motors Corporation and both of the parties named herein are subject to the jurisdiction of this Supreme Court as a matter of law.

TABLE OF AUTHORITIES

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Napoleon Spear, proceeding pro se against the above-named Respondent, General Motors Corporation and hereby respectfully petition this Honorable Supreme Court to grant Petitioner's Petition for Writ of Certiorari. This Petition is timely filed within this Court's Appellate jurisdiction pursuant to 28 U.S.C. § 1257(a).

OPINIONS BELOW

A final judgment and final order of the Circuit Court for Baltimore City, is reported at Pet. App. at 13. The final order of the Special Court of Appeals of Maryland is reported at Pet. App. at 2. The opinion and final judgment of the Maryland Court of Appeals, the highest Court of the State is reported at Pet. App. at 1. This case may be further reported in the Official Maryland Reporter and may be cited as: *Spear* v. *General Motors Corporation*, ___, Md. ___, (March 12TH, 2010).

JURISDICTION

The Opinion and final judgment of the Maryland Court of Appeals was entered on March 12TH, 2010. The Petition for Writ of Certiorari is timely filed as a matter of right. This Court has Certiorari jurisdiction pursuant to 28 U.S.C. § 1257(a) and the Supreme Court Rules, Rule 15(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This petition will address some very important Federal question under the due process clauses of the V and **XIV Amendments to United States Constitution**. This Honorable Court should answer the Federal question raised in this petition as a matter of public interest and to protect Petitioner's rights. There are gave concerns as to whether the Special Court of Appeal of Maryland and the Maryland Court of Appeals erred when they affirmed the Circuit Court for Baltimore City and denied certiorari in the case before them.

The Special Court of Appeal of Maryland erroneously found that the Circuit Court erred by improperly dismissing Petitioner's appeal in the Baltimore Circuit Court form the Maryland's Worker Compensation Commission. However, instead of reversing, the Special Court of Appeals affirmed the Circuit Court on the ground for what was stated a transcript of the lower Court proceeding rather then, for what was actually ruled upon by the lower Circuit Court for Baltimore City in its final order.

The Special Court of Appeal of Maryland affirming the lower Circuit Court for Baltimore City clearly violates Petitioner's rights to due process under both the V and **XIV Amendments** to **United States Constitution**. See, Pet. App. at 2.

I. STATEMENT OF THE CASE

The Petitioner sustained two major injury, head and legs and on top of that was denied EDB and medical benefits by Respondent.

The Petitioner was fired from GMC in 1980 without proper cause, regardless of the fact that he has served his Country with honour and pride, but he was still refused to return to his job at GMC after his service in the military.

The Petitioner sustained serious head injuries on the job while working for GMC. Petitioner also completed many physical examinations, passes most of them in order for him to return to GMC but still ran into obstacle with his employment with GMC. The Petitioner has spent many nights at BWI and the psychological affect on him as taken its toll on him. There is also the legal side that has affected Petitioner's life and has cost him time and money to redress his claims. The Petitioner has spent many years as a dedicated employee of Respondent and Respondent has turned its back on the Petitioner.

On October 22nd, 2007, the Petitioner's civil trial started in the Circuit Court for Baltimore City for a straight four days and on the fifth day of said trial the Respondent General Motors Corporation's (herein referred as GMC), lawyers approached Petitioner's lawyer with a settlement with a full acknowledgment of full and total responsibility of all Petitioner's injuries. The Petitioner's lawyer and some of Petitioner family members tried to convince Petitioner to accept the GMC settlement.

The Petitioner later agreed to the settlement with the understanding that Petitioner would be paid 100% of total disability by Respondent, GMC. The Circuit Court for Baltimore City later remanded the case back to the Maryland Worker Compensation Commission for a final determination of the settlement stated in the consent order by the parties. However, contrary to the consent order and the settlement understanding by the parties, the Maryland Worker Compensation Commission erred in its final determination and the Petitioner appealed on April 21st, 2008 again to Circuit Court for Baltimore City from the final determination of the Maryland Worker Compensation Commission.

On May 19th, 2008, Respondent, GMC moved the Circuit Court for Baltimore City for dismissal of Petitioner's de nova appeal on the ground that the appeal was untimely. On August 1st, 2008 the Circuit Court dismissed Petitioner's de novo appeal on this ground along. See, Pet. App. at 2-10.

On September 3rd, 2008, Petitioner timely appealed the Circuit Court's dismissal to the Special Court of Appeals of Maryland, arguing that the Circuit Court erred in dismissing Petitioner's case as untimely, when in fact Petitioner's de novo appeal was timely. Respondent, GMC later filed its brief conceding that Petitioner was correct, but asked the Special Court of Appeals to affirm the Circuit Court for another reason to which the Petitioner had no due process notice of a final judgment which covers all issues in the case.[1]

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[1] GMC filed its brief in the Special Court of Appeal asking it to affirm the Circuit Court for any reason.

On November 5th, 2009, the Special Court of Appeals of Maryland instead of reversing the Circuit Court for the error in dismissing Petitioner's de novo appeal before that Court, the Special Court of Appeals erroneously affirmed the Circuit Court for Baltimore City on a ground for what was stated in the transcript of the final hearing before the Circuit Court Judge and not for what was actually rule upon by the Circuit Court. See, Pet. App. at 2-12.

Due to the erroneous action by the Special Court of Appeals of Maryland in affirming the Circuit Court for Baltimore City, the Petitioner petition the Maryland Court of Appeals for certiorari arguing that the action by the Special Court of Appeals of Maryland affirming the Circuit Court for Baltimore City for the reason stated in a transcript and not in a final order violates Petitioner's rights to due process notice of a final judgment as to all issues in a civil case. On March 3rd, 2010, the Maryland Court of Appeals denied Petitioner's petition for certiorari in that Court. See, Pet. App. at 2-10.

Finally, Respondent's response brief to Petitioner's petition for certiorari simply requested the Maryland Court of Appeals to deny Petitioner's petition based upon its assertions that Petitioner had received all that he could receive concerning his worker compensation claims in the Circuit Court. The questions presented in this petition, is not whether Petitioner received all that Petitioner is legally entitled to receive, but whether the Special Court of Appeals of Maryland and the Maryland Court of Appeals both violated the Federal Constitution under 5th and 14th Amendments.

VII. ARGUMENT

First, Respondent had conceded in the State Courts before the Maryland Special Court of Appeals that the Circuit Court for Baltimore City erred when it dismissed Petitioner's de novo appeal from the Maryland Worker's Compensation Commission. Secondly, Respondent's arguments centered on the fact that the Special Court of Appeal should affirmed the Circuit Court for a reason not stated in the final order of the Circuit Court to which Petitioner had no due process notice. Secondly, Respondent failed to address the due process claims made by the Petitioner in the Maryland Court of Appeals.

August 1st, 2008, without due process notice to the Petitioner, the Circuit Court held a hearing and dismissed Petitioner's petition for judicial review. See, Pet. Appx. at 5. Instead of reversing the Circuit Court for dismissing the case as untimely, the Special Court of Appeals erroneously affirmed the Circuit Court for what the Circuit Court stated in the transcript and not for what was actually ruled upon by the Circuit Court in its final order.

The real issue in this petition is whether the Special Court of Appeals violated the Fifth and the Fourteenth Amendment to the United States Constitution when the Special Court of Appeals erroneously affirmed the Circuit Court for a reason stated in the transcript contrary to what the Circuit Court decided in its final order of dismissal of Petitioner's case. The Petitioner raises these important due process concerns under the Fifth and the Fourteenth Amendment to the United States Constitution. See, *Mapp v. Ohio*, 367 U.S. 643, 654-55 (1961).

The substantive element of the Due Process Clause protects certain rights not expressly mentioned in the Constitution, such as the right to prevent the State Courts from infringement upon the rights of the party to have a fair and final hearing. With that right, comes with the right to receive notice of a final order and the right to an appeal. See *Planned Parenthood* v. *Casey*, 505 U.S. 833, 847-49, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992). In this case, the Special Court of Appeals affirmed the trial Court on a ground to which the Petitioner had no notice and this violates Petitioner's due process rights to notice. See, *Parratt* v. *Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981).

A. *The Special Court of Appeals Clearly Erred*

The Petitioner appeared at the final hearing in the Circuit Court in this case, however, the Petitioner did not receive a final order as to all issues in the case. The Special Court of Appeals of Maryland affirmed the Circuit Court for what was stated in the transcript of the final hearing and not for what was actually ruled upon by the Circuit Court in the final order of that Court. This violates the Due Process Clauses of the Constitution of the United States because Special Court of Appeals' opinion denies Petitioner of his right to properly appeal all issue in the case. The Special Court of Appeals of Maryland clearly erred when it affirmed the Circuit Court for the reason for what was stated in transcript and not for what the Circuit Court.

The Petitioner could not appeal the issue that Special Court of Appeals rested its opinion on because Petitioner's appeal was limited to what the Circuit Court actually decided and not for what the

Circuit Court's judge stated in the transcript of the final hearing. Thus the Special Court of Appeals violated the Due Process Clauses of the Constitution of the United States because Special Court of Appeals opinion denies Petitioner of his right to properly appeal all issue in the case with notice. See, *Parratt* v. *Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981).

The Circuit Court for Baltimore City erroneously made the wrong final determination that Petitioner's petition was untimely, when in fact, it was timely. The Circuit Court dismissed the action on this ground along. Petitioner appealed from this dismissal. The Special Court of Appeals found and the Respondent conceded that Petitioner appeal was timely. However, instead of reversing the Circuit Court, the Special Court of Appeals affirmed the trial Court on the ground for what was stated by the Circuit Court in the transcript and not for what the Circuit Court actually ruled on. This is contrary to the Federal and State Constitutions, because Petitioner was denied his right to notice of a final order which covers all issues in the case so that he could appeal all issues in the final order. Therefore, since the Circuit Court never issued a final order as to all issues, the Special Court of Appeals erred when it affirmed the Circuit Court. Petitioner was not given proper due process notice to appeal all issues in the State Court because a transcript cannot be considered a final order as a matter of law. See, *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 435-436, 102 S.Ct. 1148, 1157-1158, 71 L.Ed.2d 265 (1982) (post-deprivation remedies do not satisfy due process where deprivation is caused by established state procedures).

B. Courts of Appeals Violated Constitution

Secondly, the Special Court of Appeals erred when it affirmed the Circuit Court for Baltimore City on the ground for what was stated in the transcript rather then what was rule upon by the Circuit Court in its final order thereby violating the 5th, and 14th, Amendments to the United States Constitution. The Court of Appeals cited this Court holding in *Waller* v. *Maryland Nat'l Bank*, 332 Md. 375 at 379 (1993) stating that *("when there is a conflict between the transcript of a trial and the docket entries, the transcript, unless shown to be in error, will prevail")*.

The Maryland Court Appeals in *Waller* has never held that a transcript control over a final order of a trial Court. Thus the Special Court of Appeals has clearly misconstrued the holding in *Waller* in order to base its decision in Petitioner's appeals. Furthermore, the Special Court of Appeals violated the United States Constitution under the due process provisions by finding that Petitioner was right as to the main issue of his appeal and yet instead of reversing the lower Circuit Court, the Special Court of Appeals, affirm the Circuit Court.

This Court has held in *Memphis Light, Gas & Water Div.* v. *Craft*, 436 U.S. 1, 13 (1978) that:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Furthermore, the Respondent's answer filed in the Maryland Court of Appeals in response to the Petitioner's petition for certiorari seems to support Petitioner's petition for many reasons.

First, Respondent fails to address the issues presented in Petitioner's petition for certiorari. See, Pet. Cert. at p. (ii) (Questions Presented). Failure to address a properly file and timely petition means that the petition is unopposed as to the issues presented therein. Secondly, in Respondent answer to the petition for certiorari, Respondent shows that Petitioner did not receive total disability for all of his claims as agreed by the parties.

Moreover, Respondent's contradictions on appeal because the Circuit Court never ruled upon those issue and yet affirmed the Circuit Court on the issues in the case. Therefore, it was clear that the Special Court of Appeals violated Petitioner's right to due process under the State and Federal Constitutions. See, *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 435-436, 102 S.Ct. 1148, 1157-1158, 71 L.Ed.2d 265 (1982) (post-deprivation remedies do not satisfy due process where deprivation is caused by established state procedures).

In the early view of the court, a deprivation of life, liberty, or property simply meant the punishment for crime. The requirements of due process would be met by fair procedure, including notice to the defendant and an open trial with the right to counsel. In time, however, the court concluded that due process was not limited to procedural considerations but had a substantive aspect as well.

Thus, even if proper legal procedure were observed, the substantive ground on which a person was deprived of life, liberty, or property might in itself violate due process.

The constitutionality of much state legislation and Court action was opened to question, and so many laws were attacked that at times about one third of the cases before the Supreme Court dealt with due process. In early due process cases the Supreme Court did not place limitations on traditional exercises of the States' appellate process. The Fifth Amendment guarantees of due process. The Fourteenth Amendment contains virtually the same phrase, but expressly applied to the States. Therefore, those two clauses only apply against State actors and not against private citizens.

This Supreme Court has interpreted those two clauses identically, as Justice Felix Frankfurter once explained in a concurring opinion: *"To suppose that due process of law"* meant one thing in the Fifth Amendment and another in the Fourteenth is too frivolous to require elaborate rejection. See, *Malinski* v. *New York*, 324 U.S. 401, 415 (1945), (Frankfurter, J., concurring).

VI. REASON FOR GRANTING THE WRIT

This case presents this Court with a clear opportunity to address some due process concerns that are exceedingly important and unprecedented. These are questions of first impression, concerning constitutional law under the 5th and 14th Amendments to United States Constitution. These questions should be fully resolved by this Court and should be settled by this Court concerning the application of the 5th and 14th Amendments to the United States Constitution in the State Courts.

The Fourteenth Amendment prohibits the deprivation of liberty or property without due process of law. A due process claim is cognizable only if there is a recognized liberty or property interest at stake. See, *Board of Regents* v. *Roth*, 408 U.S. 564, 69 (1972). If the State Court acts repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or any treaty or statute in the State Court, and the State's highest Court has denied relief, Federal Law, 28 U.S.C. § 1257(a) authorized this Court to hear petitions for writ of certiorari. Prior to 1988, there was a right to mandatory appeal in cases in which a state court had found invalid a federal statute or treaty or in which a state court had upheld a state statute contested under the Constitution, a treaty, or a statute of the United States. *See* the Act of June 25, 1948, 62 Stat. 929. The distinction between *certiorari* and appeal was abolished by the Act of June 27, 1988, Pub. L. 100-352, § 3, 102 Stat. 662.

The reason for granting this petition for certiorari in this matter is because the Maryland Court of Appeals violated the due process provisions of the United States Constitution under both the Fifth and Fourteenth Amendments when it refused to address Petitioner's due process claims in his petition for certiorari to the Special Court of Appeals of Maryland. See, *Bouie* v. *City of Columbia*, 378 U.S. 347, 353-354, 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964). Notwithstanding the Maryland Court of Appeals' denial of Petitioner's due process rights, Petitioner raised his constitutional challenges in the Maryland Court of Appeals, the highest Court of the State of Maryland pursuant to 28 U.S.C. § 1257(a).

Instead of addressing and reviewing the Federal Constitutional challenges made by the Petitioner before the Maryland Court of Appeals, the Maryland Court of Appeals refused to address the issues raised by the Petitioner in this petition and denied certiorari. See, Pet. App. p. 1. Due process is best defined in one word--fairness. Throughout the United States' history, its Constitution, Statutes and Case Law have all provided standards for fair treatment of citizens by federal, state and local governments. These standards are known as due process. When a person is treated unfairly by the government, including the State Courts, it is said to have deprived a person of due process of law. This case clearly fits within this Court's right to exercise jurisdiction under 28 U.S.C. § 1257(a) because the Maryland Court of Appeals denied certiorari to hear a Federal constitutional claim against the Special Court of Appeals of Maryland denying the Petitioner of due process of law when it erroneously affirmed the lower Circuit Court for Baltimore City on a ground to which Petitioner had no notice.

VI. CONCLUSION

This Court should be made aware that Respondent GMC did not have that settlement agreement writing as the Circuit Court judge instructed GMC to do the next business.

The Petitioner later realized that this was not the 100% settlement agreement that was due to his injuries that he sustained. The Circuit Court judge sent Petitioner's attorney a letter and instructed Petitioner's lawyer to explain to Petitioner the settlement in detail. Instead, Petitioner's counsel was angry at Petitioner and use bad language at the Petitioner. Respondent's counsels gave the Circuit Court a proposed order settling the matter and the judge signed it. The Petitioner believed that GMC had agreed to the fact that the Petitioner was 100% totally disable and that the (100%) and not (65%) would be paid by Respondent GMC for Petitioner's totally disability. Therefore, the only issue that remained before the Worker's Compensation Commission was what percentage of the 100% total disability of the Petitioner's claims that Respondent General Motors Corporation must pay.

However, when the case went back to the Worker's Compensation Commission after the consent order, the Commission issued decisions contrary to the consent order. This was the very reason why Petitioner petitioned the Circuit Court for Baltimore City for de novo review of the Worker's Compensation Commission's decisions. In conclusion, the Special Court of Appeals and the Maryland Court of Appeals both violated the United States Constitution, under both the 5th and 14th, Amendments, due process clauses.

This case stems from a long history of a miscarriage of justice done against the Petitioner due to General Motors Corporation's actions during the course of Petitioner's claims before the State of Maryland's Worker Compensation Commission and before the Circuit Court for Baltimore City.

WHEREFORE, The Petitioner, Napoleon Spear hereby moves this Court to GRANT this Petition for Certiorari because of the gave denial of due process of law by both the Maryland Court of Appeals, the Special Court of Appeals of Maryland and the Circuit Court for Baltimore City. Petitioner is entitled to such relief as a matter of law.

This 4th, day of June 2010.

Respectfully Submitted,

Napoleon Spear

NAPOLEON SPEAR, Petitioner
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(404) 875-4877

Counsel for Petitioner

I.

APPENDIX

NAPOLEON SPEAR	*	IN THE
	*	
v.	*	COURT OF APPEALS
	*	
GENERAL MOTORS CORP	*	OF MARYLAND
	*	
	*	Petition Docket No. 518
	*	September Term 2009
	*	
	*	(No.1585,Sept.Term, 2008 Court of Special Appeals)

ORDER

Upon consideration of the petition for writ of certiorari to the Court of Special Appeals and the answers filed thereto, in the above entitled case, in is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, demoed as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell

Chief Judge

DATE: March 12, 2010

APPENDIX

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1585

September Term 2008

NAPOLEON SPEAR

v.

GENERAL MOTORS CORPORATION

Eyler, Deborah S.,
Graeff,
Alpert, Paul E.
(Retired, Specially Assigned)

JJ.

Opinion by Eyler, Deborah S., J.

Filed: November 5, 2009

Napoleon Spear, the appellant, representing himself pro se, challenges the August 12, 2008 order of the Circuit Court for Baltimore City dismissing his petition for judicial review of two decisions of the Workers' Compensation Commission (WCC). General Motors Corporation (GMC), the appellee, was the appellant's employer at the time of the underlying accidental injuries. The appellant present three questions for review,' [2] which we have rephrased and consolidated as one: Did the circuit court err when it dismissed the appellant's petition for judicial review?

FACTS AND PROCEEDINGS

The appellant suffered workplace injuries while employed by GMC in Baltimore. The first, on January 17, 1996, occurred when he was working as

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[2] The questions, as posed by the appellant are:

1. Whether the Circuit Court erred when it dismiss[ed] Plaintiff's appeal from the [WCC] as untimely?
2. Whether the Circuit Court had jurisdiction to dismiss Plaintiff's appeal from the [WCC] as untimely before ruling on any of Plaintiff's pending Motion for Continuance and or Motion for Summary Judgment?
3. Whether the Plaintiff was entitled to Summary Judgment prior to dismissal of his case as a matter of law?

a seat belt installer and fell while operation a torque gun, injuring his right ankle and foot. He filed a claim with the WWC on March 20, 1996, which was assigned claim number B-374884 ("First Claim"). The subsequent injury, on October 2, 1996, occurred while the appellant was tightening and installing cables and became entangled in the hose of a torque gun, injuring his left thigh. The appellant filed a claim with WCC on May 19, 1997, which was assigned claim number B-409182 ("Second Claim").

On December 29, 2005, a hearing related to both claims was held before the WCC.[3] The appellant was represented by counsel at the hearing and sought, in relevant part, compensation for permanent, total disability. On May 17, 2006, the WCC issued its decision on both claims. The details of the WCC's award are not relevant here except that the WCC did not find that the appellant was totally and permanently disabled.

On June 13, 2006, the appellant, through counsel, filed a petition for judicial review in the Circuit Court for Baltimore City. After numerous

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[3] Proceedings before the WCC prior to the December 29, 2005 hearing are not relevant to the issue on appeal.

continuances, a trial on the administrative appeal began on October 22, 2007. Prior to completion of the trial, however, the parties reached an agreement and entered into a consent order. By the terms of that order, which was approved by the circuit court on October 29, 2007, the parties agreed that the appellant was "permanently and totally disabled as a result of his psychiatric and orthopedic conditions" and that the case would be "remanded to the [WCC] for a determination as to the extent to which the permanent total disability is the result of pre-existing conditions, including but not limited to psychiatric, the accident of January 17, 1996 and/or the accident of October 2. 1996[.]"[4]

On remand to the WCC, a hearing was set in February 11, 2008. The appellant was represented by counsel at the hearing.

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[4] The parties also agreed that the WCC would render decisions on issue raised at the December 29, 2005 hearing that it had previously determined were not applicable; that GMC would retroactively pay appellant temporary total disability for the periods from February 27, 1999, to November 10, 1999, and from April 21, 2000, to January 27, 2001; that GMC would pay the appellant's medical expenses including those for prescriptions; that the psychiatric disability was related to both the First Claim and the Second Claim; and the Second Claim was not barred by limitations.

He testified briefly concerning his health problems and the hearing was adjourned.

On March 20, 2008, the WCC issued its decisions on both claims. As to the First Claim, the WCC ruled in pertinent part: that the May 17, 2006 order was rescinded and annulled; that appellant did suffer an accidental injury on January 17, 1996, relating to his back, right leg, and his psychiatric condition; that he was permanently and totally disabled; that his disability was 35% due to the accidental injury, 40% due to pre-existing condition, and 25% due to a subsequent accident or the deterioration of a pre-existing condition; and that "the appellant [was] not entitled to permanent total benefits." The WCC ordered GMC pay the appellant permanent, partial disability in the amount of $180 per week for 175 weeks, the Subsequent Injury Fund (SIF) to commence paying the appellant $180 per week, but not to exceed $36,000.

As to the Second Claim, the WCC ruled in pertinent part: that the May 17, 2006 order was rescinded and annulled; that the appellant did suffer an accidental injury on October 2, 1996, relating to his "back, left leg/thigh and psychiatric"; and that the appellant was temporarily and totally disabled

from February 17, 1999, to November 10, 1999, inclusive and from April 21, 2000, to January 27, 2001, inclusive as a result of the accident.

The WCC further found that the combined effects of previous permanent impairments and the accident resulted in the appellant's becoming permanently, totally disabled. GMC was ordered to pay the appellant retroactively for the two periods of temporary, total disability at the rate of $540 per week. It also was ordered to pay the appellant retroactively for permanent, total disability at a rate of $540 per week beginning January 28, 2001, but not to exceed $22, 500. At the conclusion of GMC's payment to the appellant, the SIF was to begin making weekly payments to him at the reduced rate of $340 per week "to account for credit allowed under [the First Claim]" for a period of 180 weeks, and then resume paying at the rate of $540 per week for "as long as the [appellant] remains permanently and totally disabled." On March 28, 2008, the SIF filed a Request for Rehearing as to the Second Claim.[5]

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[5] The SIF sought an additional credit in the amount of $31,500 based on amounts ordered to be paid by GMC to the appellant in the First Claim.

The record does not reveal whether this request was ruled upon and, if a rehearing was held, the result. On April 21, 2008, the appellant, now pro se,[6] filed a Petition for Judicial Review as to both claims in the Circuit Court for Baltimore City. On May 19, 2008, GMC moved to dismiss the petition as untimely as to the First Claim only.[7] It argued that the 30-day time to appeal began to run the day the WCC decision was issued (March 20, 2008) and expired on Friday, April 18, 2008.

The appellant opposed the motion to dismiss, arguing that 30 days expired on Saturday, April 19, 2008, the circuit court held a hearing in the judicial review action.

[6] On June 20, 2008, the appellant filed in the circuit court a motion to compel the attorney who had represented him before the WCC to appear and represent him in the judicial review action. His attorney opposed this motion, arguing that the appellant had received all that he had requested before the WCC and there were no grounds upon which to challenge the ruling on either claim. On July 18, 2008, the Circuit Court denied the appellant's motion.

[7] The appeal of the Second Claim was not untimely, according to GMC, because the SIF's request for rehearing had stayed the time to appeal.

On the day of the hearing, the appellant filed a motion for continuance and a motion for summary judgment. The court heard argument on the appellant's motion for continuance and denied it. The court next heard argument on the motion to dismiss the appeal of the First Claim. GMC argued that the First Claim should be dismissed as untimely and, alternatively, that the appeal of both claims should be dismissed on the ground that the appellant was not an aggrieved party having received all that he sought before the WCC. The circuit court ruled as follow:

> THE COURT: So the Court does find that the appeal was timely filed. However, as to the issue as to the Claimant's ability to proceed based upon the Maryland cases that supports the position that he's prohibited from filing an appeal because he did receive everything he requested from the Commission.
>
> [THE APPELLANT]: Yeah.
>
> THE COURT: For those reasons the Court will grant the motion to dismiss.

The appellant, unclear as to how the court had ruled, asked for clarification and the Court responded:

> "I found-I found it was-your appeal was timely filed, but because you did get 100 percent of what you were requesting from the Commission, and that was the basis why when you tried to have your attorney compel that that was denied, that's the basis of me dismissing this."

The court's order, dated August 1, 2008, and filed August 14, 2008, did not accurately reflect its ruling, however. The order stated that the Court was granting GMC's motion to dismiss as untimely the appeal of the First Claim.[8]

On August 25, 2008, GMC wrote to the court and requested that a corrected order be issued reflecting the actual grounds for dismissal given at the hearing. The appellant objected to GMC's request. No corrected order ever was issued.

On September 3, 2008, the appellant noted this timely appeal of the order dismissing his appeal.

DISCUSSION

It is undisputed that the circuit court did not intend to dismiss as untimely the appellant's petition for judicial review of the First Claim.

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[8] The order signed by the Court was the proposed order filed by GMC with its motion to dismiss. GMC did not provide the court with an amended proposed order reflecting the new grounds for dismissal raised for the first time at the August 1, 2008 hearing.

The Court stated in its oral ruling that the administrative appeal was timely and GMC acknowledged, both in its letter to the Circuit Court and in its brief before this Court, that its motion to dismiss on timeliness grounds should have been and was, in fact, denied. Where, as here, there is a conflict between the transcript of the proceeding and the written order, the transcript must control. Cf. Waller v. Maryland Nat'l Bank, 332 Md. 375, 379 (1993)("when there is a conflict between the transcript of a trial and the docket entries, the transcript, unless shown to be in error, will prevail"); Shale v. State, 18 Md. App. 407, 411 (1973)("The transcript of the trial, unless shown to be in error, takes precedence over the docket entries[.]"). The transcript reflects that, because it found that the appellant was not an aggrieved party and therefore had no grounds upon which to appeal,[9] the circuit

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[9] As the circuit court noted in its oral ruling, this was consistent with the opposition to the motion to compel filed by the attorney who had represented the appellant before the WCC. The attorney stated that his client "was found to have a 100% permanent disability" and "all other pending issue" resolved in his favor. He further stated that his client wished to appeal the WCC decision because he wanted "[GMC] to pay more than the [SIF]."

court dismissed the petition for judicial review of both WCC decisions.[10] See, Offutt v. Montgomery County Bd Of Educ , 285 Md. 557, 564 n. 4 (1979) ("It is established as a general principle that only a party aggrieved by a Court's judgment may take an appeal[.]"). We find no error with the Circuit Court's ruling and, accordingly, will affirm the dismissal of the appellant's petition for judicial review.[11]

JUDGMENT AFFIRMED. COST TO BE PAID BY THE APPELLANT

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[10] While there were two separate claims related to the two separate accidents before the WCC, the claims were heard together and the decisions issued by the WCC cross-referenced one another. Also, on appeal to the circuit court, only one petition for judicial review was filed and one case number was assigned. Accordingly, the cases were effectively consolidated.

[11] As noted, supra, the appellant was found to be totally and permanently disabled and was awarded compensation in the amount of $540 per week, subject to certain credits and offsets. This was the maximum weekly payment allowed because, pursuant to Md. Code Ann. (2998 Repl Vol.) section 9-637(a)(1) of the Labor and Employment Article, compensation for permanent, total disability shall be equal to "two thirds of the average weekly wage of the covered employee," but not to exceed the State average weekly wage. In 1996, when the appellant suffered his accidental injuries, the State average weekly wage was $540.

APPENDIX

NAPOLEON SPEAR	*	IN THE
	*	
Claimant	*	CIRCUIT COURT
	*	
v.	*	FOR
	*	
GNERAL MOTORS CORP	*	BALTIMORE CITY
	*	
Self-Insured Employer	*	(Appeal From Worker
	*	Compensation Comm.
and	*	Claims No. B374884
	*	& B409182
	*	
SUBEQUENT INJURY FUND		Case No. 24-C-08-002568

****

ORDER

Upon consideration of the Self-Insured Employer's Motion to Dismiss Commission Claim Bo.;B374884 for Failure to Timely File a Petition for Judicial Review and any response hereto, it is this 1st, day of Aug , 2008, by the Circuit Court for Baltimore City,

ORDERED, that the Motion be and hereby GRANTED that the Claimant's Appeal from the decision of the Worker's Compensation Commission in Claim No.:B374884 be and is hereby DISMISSED, and that the order to the Worker's Compensation Commission dated July 11, 2006 be and is hereby AFFIRMED. Cost to be paid by the Claimant.

/S/ MARTIN P. WELCH,

Judge of the Circuit Court

TRUE COPY

/s/ by the Clerk of Court

Clerk

Supreme Court, U.S.
FILED
AUG 26 2010
OFFICE OF THE CLERK

No. 09-1579

IN THE
Supreme Court of the United States

October Term 2010

Napoleon Spear,

Petitioner,

v.

General Motors Corporation a/k/a
General Motors Company

Respondent.

Petition for Writ of Certiorari to the Court of Appeals of Maryland

REPLY BRIEF

NAPOLEON SPEAR, Petitioner
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Counsel for Petitioner

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QUESTIONS PRESENTED

This petition raises important issues concerning the following Federal questions to wit:

1. Did the Maryland Court of Appeals and the Maryland Special Court of Appeals violated the due process clauses of under the 5th, and 14th, amendments to the United States Constitution when they affirmed the Circuit Court for Baltimore City by finding that the Circuit Court erred in dismissing Petitioner's case in that Court, yet instead of reversing such error, affirmed the Circuit Court for a reason that was stated in the transcript of the proceeding and not for what the Circuit Court actually rule upon in its final order?

2. May a State Supreme Court or a State Court of Appeals affirm a lower State trial Court on any ground not stated in the final order or on any ground not appealed by the parties and where an appellant had no reasonable opportunity to appeal or address such ground in the State Appellate Court in clear violation of an appellant rights to due process under both the 5th, and 14th, amendments to the United States Constitution?

LIST OF THE PARTIES TO THE PROCEEDINGS

Mr. Napoleon Spear is the petitioner in this case and he is proceeding in this matter pro se as a matter of right. Petitioner is a former employee of the Respondent. The Respondent in this matter is General Motors Corporation and both of the parties named herein are subject to the jurisdiction of this Supreme Court as a matter of law.

TABLE OF AUTHORITIES

United States Supreme Court Decisions

Betts v. *Brady*,
316 U.S. 455, 62 S.Ct. 1252 (1954) 4

Bolling v. *Sharpe*,
347 U.S. 497, 500, 74 S.Ct. 693, (1954) 5

Bouie v. *City of Columbia*,
378 U.S. 347, 84 S. Ct. 1697(1964) 13

Buckley v. *Valeo*,
424 U.S. 1 (1976) 5

Califano v. *Webster*,
430 U.S. 313 (1977) 6

Craig v. *Boren*,
429 U.S. 190, 197 (1976) 6

Hampton v. *Mow Sun Wong*
426 U.S. 88, 100, 96 S.Ct. 1895 (1976) 5

Logan v. *Zimmerman Brush Co.*,
455 U.S. 422, 102 S.Ct. 1148(1982) 8, 10

Mapp v. *Ohio*,
367 U.S. 643, 654-55 (1961) 6

Malinski v. *New York*,
324 U.S. 401, 415 (1945) 13

Memphis Light, Gas & Water Div. v. *Craft*,

436 U.S. 1, 13 (1978) 9

Planned Parenthood v. *Casey*,

505 U.S. 833, 112 S.Ct. 2791(1992) 8

Parratt v. *Taylor*,

451 U.S. 527, 101 S.Ct. 1908 (1981) 8, 9

Truax v. *Corrigan* 257 U.S. 317 (1921) 4

Weinberger v. *Wiesenfeld*,

420 U.S. 636 (1975) 5

Vance v. *Bradley*,

440 U.S. 93, (1979) 5

Constitutional and Federal Statutes

Amendment V and XIV 2, 9, 12

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I. INTRODUCTION

The Petitioner sustained serious head injuries on the job while working for GMC. Petitioner also completed many physical examinations, passes most of them in order for him to return to GMC but still ran into obstacle with his employment with GMC. The Petitioner has spent many nights at BWI and the psychological affect on him as taken its toll on him. There is also the legal side that has affected Petitioner's life and has cost him time and money to redress his claims. The Petitioner has spent many years as a dedicated employee of Respondent and Respondent has turned its back on the Petitioner.

On October 22nd, 2007, the Petitioner's civil trial started in the Circuit Court for Baltimore City for a straight four days and on the fifth day of said trial the Respondent General Motors Corporation's (herein referred as GMC), lawyers approached Petitioner's lawyer with a settlement with a full acknowledgment of full and total responsibility of all Petitioner's injuries. The Petitioner's lawyer and some of Petitioner family members tried to convince Petitioner to accept the GMC settlement. The Petitioner later agreed to the settlement with the understanding that Petitioner would be paid 100% of total disability by Respondent, GMC. The Circuit Court for Baltimore City later remanded the case back to the Maryland Worker Compensation Commission for a final determination of the settlement stated in the consent order by the parties. However, contrary to the consent order and the settlement understanding by the parties, the Maryland Worker Compensation Commission erred in its final determination.

The Petitioner appealed on April 21st, 2008 again to Circuit Court for Baltimore City from the final determination of the Maryland Worker Compensation Commission.

On May 19th, 2008, Respondent, GMC moved the Circuit Court for Baltimore City for dismissal of Petitioner's de nova appeal on the ground that the appeal was untimely. On August 1st, 2008 the Circuit Court dismissed Petitioner's de novo appeal on this ground along. See, Pet. App. at 2-10.

On September 3rd, 2008, Petitioner timely appealed the Circuit Court's dismissal to the Special Court of Appeals of Maryland, arguing that the Circuit Court erred in dismissing Petitioner's case as untimely, when in fact Petitioner's de novo appeal was timely. Respondent, GMC later filed its brief conceding that Petitioner was correct, but asked the Special Court of Appeals to affirm the Circuit Court for another reason to which the Petitioner had no due process notice of a final judgment which covers all issues in the case.[1]

On November 5th, 2009, the Special Court of Appeals of Maryland instead of reversing the Circuit Court for the error in dismissing Petitioner's de novo appeal before that Court, the Special Court of Appeals erroneously affirmed the Circuit Court for Baltimore City on a ground for what was stated in the transcript of the final hearing before the Circuit Court Judge and not for what was actually rule upon by the Circuit Court. See, Pet. App. at 2-12.

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[1] GMC filed its brief in the Special Court of Appeal asking it to affirm the Circuit Co urt for any reason.

Due to the erroneous action by the Special Court of Appeals of Maryland in affirming the Circuit Court for Baltimore City, the Petitioner petition the Maryland Court of Appeals for certiorari arguing that the action by the Special Court of Appeals of Maryland affirming the Circuit Court for Baltimore City for the reason stated in a transcript and not in a final order violates Petitioner's rights to due process notice of a final judgment as to all issues in a civil case. On March 3rd, 2010, the Maryland Court of Appeals denied Petitioner's petition for certiorari in that Court. See, Pet. App. at 2-10.

Finally, Respondent's response brief to Petitioner's petition for certiorari simply requested the Maryland Court of Appeals to deny Petitioner's petition based upon its assertions that Petitioner had received all that he could receive concerning his worker compensation claims in the Circuit Court. The questions presented in this petition, is not whether Petitioner received all that Petitioner is legally entitled to receive, but whether the Special Court of Appeals of Maryland and the Maryland Court of Appeals both violated the Federal Constitution under 5th and 14th Amendments.

II. DISCUSSION

In *Betts* v. *Brady*, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595 (1954), this Court asserted that the denial of due process is to be tested by an appraisal of the totality of facts given in a case. That which constitute a denial of fundamental fairness and shocking to the universal sense of justice may, in other circumstances and in the light of other considerations which fall short of such denial. See, 316 U.S., at 462, 62 S.Ct., at 1256, 86 L.Ed. 1595.

Under both the Fifth and Fourteenth Amendments to the U.S. Constitution, neither the federal government nor state governments may deprive any person *"of life, liberty, or property without due process of law."* A similar due process provision was found in the Magna Charta, as well as early state constitutions. Chief Justice William Howard Taft explained the purpose behind the clauses in *Truax* v. *Corrigan* 257 U.S. 317 (1921) as follows:

> "The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty, and property, which the Congress or the Legislature may not withhold."

Courts have therefore interpreted the due process clauses as providing two distinct limitations on government. First, the clauses provide for procedural due process, which requires the government to follow certain procedures before it deprives a person of life, liberty, or property. Cases that address procedural due process usually focus on the type of notice that is required of the government or the type of hearing that must be held when the government takes a particular action. Second, the clauses establish substantive due process, under which courts determine whether the government has sufficient justification for its actions. Because courts use substantive due process to protect certain fundamental rights of U.S. citizens, issues related to substantive due process have been the subject of extensive debate.

The Fifth Amendment provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law . . . ."

In numerous decisions, this Court *"has held that the Due Process Clause of the Fifth Amendment forbids the Federal Government to deny equal protection of the laws." e.g., Hampton v. Mow Sun Wong,* 426 U.S. 88, 100, 96 S.Ct. 1895, 1903, 48 L.Ed.2d 495 (1976); *Buckley v. Valeo,* 424 U.S. 1, 93, 96 S.Ct. 612, 670, 46 L.Ed.2d 659 (1976); *Weinberger v. Wiesenfeld,* 420 U.S. 636, 638 n. 2, 95 S.Ct. 1225, 1228, 43 L.Ed.2d 514 (1975); *Bolling v. Sharpe,* 347 U.S. 497, 500, 74 S.Ct. 693, 694, 98 L.Ed. 884 (1954). *Vance v. Bradley,* 440 U.S. 93, 95 n. 1, 99 S.Ct. 939, 942, 59 L.Ed.2d 171 (1979).

"To withstand scrutiny under the equal protection component of the Fifth Amendment's Due Process Clause, 'classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." See, *Craig v. Boren*, 429 U.S. 190, 197, 97 S.Ct. 451, 456, 50 L.Ed.2d 397 (1976); *Califano v. Webster*, 430 U.S. 313, 316-317, 97 S.Ct. 1192, 1194, 51 L.Ed.2d 360 (1977).[2]

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[2] The State Appellate Courts of this country properly share the responsibility for protecting the constitutional rights of those of disable persons such as the Petitioner in this case. Thus, when a party's rights are wrongfully destroyed, the state Courts must ensure that a party has no less than any other person. The Constitution, as well as human decency, requires no less. The issue in these cases, however, does not concern whether a party may recover damages for deprivation of rights. Rather, these cases decide the appropriate source of the constitutional right and the remedy that corresponds with it.

VII. ARGUMENT

The Respondent have now conceded through its wavier to respond to Petitioner's petition for certiorari as it did in the State Courts before the Maryland Special Court of Appeals that the Circuit Court for Baltimore City erred when it dismissed Petitioner's de novo appeal from the Maryland Worker's Compensation Commission.

The Respondent's filed wavier with this Court should clearly support all facts and arguments stated in Petitioner's petition. The Petitioner hereby moves this Court to adopt the facts and arguments stated in the Petitioner's petition for certiorari as true and correct due to the Respondent's waiver.

August 1st, 2008, without due process notice to the Petitioner, the Circuit Court held a hearing and dismissed Petitioner's petition for judicial review. See, Pet. Appx. at 5. Instead of reversing the Circuit Court for dismissing the case as untimely, the Special Court of Appeals erroneously affirmed the Circuit Court for what the Circuit Court stated in the transcript and not for what was actually ruled upon by the Circuit Court in its final order.

The real issue in this petition is whether the Special Court of Appeals violated the Fifth and the Fourteenth Amendment to the United States Constitution when the Special Court of Appeals erroneously affirmed the Circuit Court for a reason stated in the transcript contrary to what the Circuit Court decided in its final order of dismissal of Petitioner's case. This was at the appellate stage.

The Petitioner raises these important due process concerns under the Fifth and the Fourteenth Amendment to the United States Constitution. See, *Mapp* v. *Ohio*, 367 U.S. 643, 654-55 (1961).

The substantive element of the Due Process Clause protects certain rights not expressly mentioned in the Constitution, such as the right to prevent the State Courts from infringement upon the rights of the party to have a fair and final hearing. With that right, comes with the right to receive notice of a final order and the right to an appeal. See *Planned Parenthood* v. *Casey*, 505 U.S. 833, 847-49, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992). In this case, the Special Court of Appeals affirmed the trial Court on a ground to which the Petitioner had no notice and this violates Petitioner's due process rights to notice. See, *Parratt* v. *Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981).

A. *Wavier Supports Petitioner's Claims*

The Respondent, General Motors Company's wavier to respond to Petitioner's claims in his petition for certiorari should clearly indicate that this Court has jurisdiction to hear this matter and that the constitutional violations stated herein accrued at the appellate stage of these proceedings.

The Special Court of Appeals of Maryland clearly violated the 5th, and 14th, Amendments to the United States Constitution when it denied the Petitioner the right to due process notice in this matter. The Petitioner had no remedy other than to petition for certiorari in the Maryland Court of Appeals which is the highest Court of that State. See, 28 U.S.C. § 1257(a).

In the lower State trial Court, the Petitioner appeared at the final hearing before Circuit Court for Baltimore City. The Petitioner never received a final order as to all issues in the case.

The Special Court of Appeals of Maryland affirmed the Circuit Court for what was stated in the transcript of the final hearing and not for what was actually ruled upon by the Circuit Court in the final order of that Court. This violates the Due Process Clauses of the Constitution of the United States because Special Court of Appeals' opinion denies Petitioner of his right to properly appeal all issue in the case. The Special Court of Appeals of Maryland clearly erred when it affirmed the Circuit Court for the reason for what was stated in transcript and not for what the Circuit Court. The Petitioner was never given the right at the appellate stage to address his constitutional claims in the highest Court of the State pursuant to 28 U.S.C. § 1257(a).

The Petitioner could not appeal the issue that Special Court of Appeals rested its opinion on because Petitioner's appeal was limited to what the Circuit Court actually decided and not for what the Circuit Court's judge stated in the transcript of the final hearing. Thus the Special Court of Appeals violated the Due Process Clauses of the Constitution of the United States because Special Court of Appeals opinion denies Petitioner of his right to properly appeal all issue in the case with notice. See, *Parratt* v. *Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981).

10.

The Circuit Court for Baltimore City erroneously made the wrong final determination that Petitioner's petition was untimely, when in fact, it was timely. The Circuit Court dismissed the action on this ground along. Petitioner appealed from this dismissal. The Special Court of Appeals found and the Respondent conceded that Petitioner appeal was timely. However, instead of reversing the Circuit Court, the Special Court of Appeals affirmed the trial Court on the ground for what was stated by the Circuit Court in the transcript and not for what the Circuit Court actually ruled on. This is contrary to the Federal and State Constitutions, because Petitioner was denied his right to notice of a final order which covers all issues in the case so that he could appeal all issues in the final order. Therefore, since the Circuit Court never issued a final order as to all issues, the Special Court of Appeals erred when it affirmed the Circuit Court. Petitioner was not given proper due process notice to appeal all issues in the State Court because a transcript cannot be considered a final order as a matter of law. See, *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 435-436, 102 S.Ct. 1148, 1157-1158, 71 L.Ed.2d 265 (1982) (post-deprivation remedies do not satisfy due process where deprivation is caused by established state procedures).

B. *Courts of Appeals Violated Constitution*

Secondly, the Special Court of Appeals erred when it affirmed the Circuit Court for Baltimore City on the ground for what was stated in the transcript rather then what was rule upon by the Circuit Court in its final order thereby violating the 5th, and 14th, Amendments to the United States Constitution. The Court of Appeals cited this Court holding in *Waller v. Maryland Nat'l Bank*, 332 Md. 375 at 379 (1993) stating that *("when there is a conflict between the transcript of a trial and the docket entries, the transcript, unless shown to be in error, will prevail")*.

The Maryland Court Appeals in *Waller* has never held that a transcript control over a final order of a trial Court. Thus the Special Court of Appeals has clearly misconstrued the holding in *Waller* in order to base its decision in Petitioner's appeals. Furthermore, the Special Court of Appeals violated the United States Constitution under the due process provisions by finding that Petitioner was right as to the main issue of his appeal and yet instead of reversing the lower Circuit Court, the Special Court of Appeals, affirm the Circuit Court.

This Court has held in *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 13 (1978) that:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Furthermore, the Respondent's answer filed in the Maryland Court of Appeals in response to the Petitioner's petition for certiorari seems to support Petitioner's petition for many reasons.

First, Respondent fails to address the issues presented in Petitioner's petition for certiorari. See, Pet. Cert. at p. (ii) (Questions Presented). Failure to address a properly file and timely petition means that the petition is unopposed as to the issues presented therein. Secondly, in Respondent answer to the petition for certiorari, Respondent shows that Petitioner did not receive total disability for all of his claims as agreed by the parties.

Moreover, Respondent's contradictions on appeal because the Circuit Court never ruled upon those issue and yet affirmed the Circuit Court on the issues in the case. Therefore, it was clear that the Special Court of Appeals violated Petitioner's right to due process under the State and Federal Constitutions. See, *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 435-436, 102 S.Ct. 1148, 1157-1158, 71 L.Ed.2d 265 (1982) (post-deprivation remedies do not satisfy due process where deprivation is caused by established state procedures).

In the early view of the court, a deprivation of life, liberty, or property simply meant the punishment for crime. The requirements of due process would be met by fair procedure, including notice to the defendant and an open trial with the right to counsel. In time, however, the court concluded that due process was not limited to procedural considerations but had a substantive aspect as well.

Thus, even if proper legal procedure were observed, the substantive ground on which a person was deprived of life, liberty, or property might in itself violate due process.

The constitutionality of much state legislation and Court action was opened to question, and so many laws were attacked that at times about one third of the cases before the Supreme Court dealt with due process. In early due process cases the Supreme Court did not place limitations on traditional exercises of the States' appellate process. The Fifth Amendment guarantees of due process. The Fourteenth Amendment contains virtually the same phrase, but expressly applied to the States. Therefore, those two clauses only apply against State actors and not against private citizens.

This Supreme Court has interpreted those two clauses identically, as Justice Felix Frankfurter once explained in a concurring opinion: *"To suppose that due process of law"* meant one thing in the Fifth Amendment and another in the Fourteenth is too frivolous to require elaborate rejection. See, *Malinski v. New York*, 324 U.S. 401, 415 (1945), (Frankfurter, J., concurring).

VI. REASON FOR GRANTING THE WRIT

This case presents this Court with a clear opportunity to address some due process concerns that are exceedingly important and unprecedented. These are questions of first impression, concerning constitutional law under the 5th and 14th Amendments to United States Constitution. These questions should be fully resolved by this Court and should be settled by this Court concerning the application of the 5th and 14th Amendments to the United States Constitution in the State Courts.

The Fourteenth Amendment prohibits the deprivation of liberty or property without due process of law. A due process claim is cognizable only if there is a recognized liberty or property interest at stake. See, *Board of Regents* v. *Roth*, 408 U.S. 564, 69 (1972). If the State Court acts repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or any treaty or statute in the State Court, and the State's highest Court has denied relief, Federal Law, 28 U.S.C. § 1257(a) authorized this Court to hear petitions for writ of certiorari. Prior to 1988, there was a right to mandatory appeal in cases in which a state court had found invalid a federal statute or treaty or in which a state court had upheld a state statute contested under the Constitution, a treaty, or a statute of the United States. *See* the Act of June 25, 1948, 62 Stat. 929. The distinction between *certiorari* and appeal was abolished by the Act of June 27, 1988, Pub. L. 100-352, § 3, 102 Stat. 662.

The reason for granting this petition for certiorari in this matter is because the Maryland Court of Appeals violated the due process provisions of the United States Constitution under both the Fifth and Fourteenth Amendments when it refused to address Petitioner's due process claims in his petition for certiorari to the Special Court of Appeals of Maryland. See, *Bouie* v. *City of Columbia*, 378 U.S. 347, 353-354, 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964). Notwithstanding the Maryland Court of Appeals' denial of Petitioner's due process rights, Petitioner raised his constitutional challenges in the Maryland Court of Appeals, the highest Court of the State of Maryland pursuant to 28 U.S.C. § 1257(a).

Instead of addressing and reviewing the Federal Constitutional challenges made by the Petitioner before the Maryland Court of Appeals, the Maryland Court of Appeals refused to address the issues raised by the Petitioner in this petition and denied certiorari. See, Pet. App. p. 1. Due process is best defined in one word--fairness. Throughout the United States' history, its Constitution, Statutes and Case Law have all provided standards for fair treatment of citizens by federal, state and local governments. These standards are known as due process. When a person is treated unfairly by the government, including the State Courts, it is said to have deprived a person of due process of law. This case clearly fits within this Court's right to exercise jurisdiction under 28 U.S.C. § 1257(a) because the Maryland Court of Appeals denied certiorari to hear a Federal constitutional claim against the Special Court of Appeals of Maryland denying the Petitioner of due process of law when it erroneously affirmed the lower Circuit Court for Baltimore City on a ground to which Petitioner had no notice.

VI. CONCLUSION

The Petitioner has suffered through the proceedings in the State court system. This Court has the opportunity to address some important issue presented in Petitioner's petition. Petitioner is a disable person fighting for his rights to justice and this Court can remedy such in-justice done to the Petitioner in this matter. The Petitioner so move this Court to be fair and impartial in this case.

When the Petitioner later realized that the consent judgment signed by Petitioner's attorney was not the 100% settlement that was due to Petitioner for his injuries that Petitioner had sustained, Petitioner rejected the agreement and appeal. The Circuit Court judge sent Petitioner's attorney a letter instructing Petitioner's lawyer to explain the true nature of the consent judgment in detail. Instead, Petitioner's counsel was angry at Petitioner and use bad language at the Petitioner. Respondent's counsels gave the Circuit Court a proposed order settling the matter and the judge signed it. The Petitioner believed that GMC had agreed to the fact that the Petitioner was 100% totally disable and that the (100%) and not (65%) would be paid by Respondent GMC for Petitioner's totally disability. Therefore, the only issue that remained before the Worker's Compensation Commission was what percentage of the 100% total disability of the Petitioner's claims that Respondent General Motors Corporation must pay.

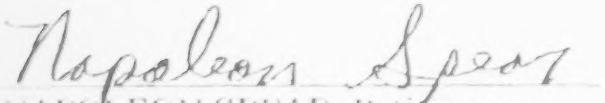
However, when the case went back to the Worker's Compensation Commission after the consent order, the Commission issued decisions contrary to the consent order.

This was the very reason why Petitioner petitioned the Circuit Court for Baltimore City for de novo review of the Worker's Compensation Commission's decisions. In conclusion, the Special Court of Appeals and the Maryland Court of Appeals both violated the United States Constitution, under both the 5th and 14th, Amendments, due process clauses. This case stems from a long history of a miscarriage of justice done against the Petitioner due to General Motors Corporation's actions during the course of Petitioner's claims before the State of Maryland's Worker Compensation Commission and before the Circuit Court for Baltimore City.

WHEREFORE, The Petitioner, Napoleon Spear hereby moves this Court to GRANT this Petition for Certiorari because of the gave denial of due process of law by both the Maryland Court of Appeals, the Special Court of Appeals of Maryland and the Circuit Court for Baltimore City. Petitioner is entitled to such relief as a matter of law.

This 24th, day of August 2010.

Respectfully Submitted,



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FILED
OCT 29 2010

No. 09-1579

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Napoleon Spear,

Petitioner,

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Respondent.

Petition for Writ of Certiorari to the Court of Appeals of Maryland

PETITION FOR REHEARING

NAPOLEON SPEAR, Petitioner
1419 Kennesaw Drive, N.W.
Atlanta, Georgia 30318
(404) 875-4877

Counsel for Petitioner

T. WARE PRINTING GROUP / Atlanta, Georgia 30315 / 404-945-0342

QUESTION PRESENTED

This petition raises important issues concerning the following Federal question to wit:

1. May a State Supreme Court or a State Court of Appeals affirm a lower State trial Court on any ground not stated in the lower trial Court's final order or on any other grounds not appealed by the parties, where an appellant had no reasonable opportunity to appeal or address such ground in the State's lower trial Courts or the State Appellate Courts in clear violation of an appellant rights to due process under both the 5th, and 14th, amendments to the United States Constitution?

LIST OF THE PARTIES TO THE PROCEEDINGS

Mr. Napoleon Spear is the petitioner in this case and he is proceeding in this matter pro se as a matter of right. Petitioner is a disabled employee of the Respondent. The Respondent in this matter is General Motors Company f/k/a General Motors Corporation and both of the parties named herein this Petition for Rehearing are subject to the Supreme Court's jurisdiction as a matter of law.

TABLE OF AUTHORITIES

United States Supreme Court Decisions

Betts v. *Brady*,
316 U.S. 455, 62 S.Ct. 1252 (1954) 4

Bolling v. *Sharpe*,
347 U.S. 497, 500, 74 S.Ct. 693, (1954) 5

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Hampton v. *Mow Sun Wong*,
426 U.S. 88, 100, 96 S.Ct. 1895 (1976) 5

Logan v. *Zimmerman Brush Co*.,
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PETITION FOR REHEARING

The Petitioner Napoleon Spear hereby files this Petition for Rehearing in this matter pursuant to the Supreme Court Rules, Rule 44(a) within (25) days from the date of this Court denying the petition for Certiorari in this matter. See, Rule 44.

I. BACKGROUND

This Court denied Certiorari on October 4th, 2010 without reason to the parties. Notwithstanding this fact, the Petitioner prays that this Court not simply overlook this Petition concerning the very important Federal question presented in this petition. On October 22nd, 2007, the Petitioner's civil trial started in the Circuit Court for Baltimore City for a straight four days and on the fifth day of said trial the Respondent General Motors Corporation's (herein referred as GMC), lawyers approached Petitioner's lawyer with a settlement with a full acknowledgment of full and total responsibility of all Petitioner's injuries. The Petitioner's lawyer and some of Petitioner family members tried to convince Petitioner to accept the GMC settlement. The Petitioner later agreed to the settlement with the understanding that Petitioner would be paid 100% of total disability by Respondent, GMC. The Circuit Court for Baltimore City later remanded the case back to the Maryland Worker Compensation Commission for a final determination of the settlement stated in the consent order by the parties. However, contrary to the consent order and the settlement understanding by the parties, the Maryland Worker Compensation Commission erred in its final determination. The Petitioner appealed on April 21st, 2008 again to Circuit Court for Baltimore City from the final determination of the Maryland Worker Compensation Commission. On May 19th, 2008, Respondent, GMC moved the Circuit Court for Baltimore City for dismissal of Petitioner's de nova appeal on the ground that the appeal was untimely. On August 1st, 2008 the Circuit Court dismissed Petitioner's de novo appeal on this ground along. See, Pet. App. at 2-10.

On September 3rd, 2008, Petitioner timely appealed the Circuit Court's dismissal to the Special Court of Appeals of Maryland, arguing that the Circuit Court erred in dismissing Petitioner's case as untimely, when in fact Petitioner's de novo appeal was timely. Respondent, GMC later filed its brief conceding that Petitioner was correct, but asked the Special Court of Appeals to affirm the Circuit Court for another reason to which the Petitioner had no due process notice of a final judgment which covers all issues in the case.[1]

On November 5th, 2009, the Special Court of Appeals of Maryland instead of reversing the Circuit Court for the error in dismissing Petitioner's de novo appeal before that Court, the Special Court of Appeals erroneously affirmed the Circuit Court for Baltimore City on a ground for what was stated in the transcript of the final hearing before the Circuit Court and not for what was actually rule upon by the Circuit Court in its order. See, Pet. App. at 2-12.

Due to the erroneous action by the Special Court of Appeals of Maryland in affirming the Circuit Court for Baltimore City, the Petitioner petition the Maryland Court of Appeals for certiorari. On March 3rd, 2010, the Maryland Court of Appeals denied Petitioner's petition for certiorari in that Court. See, Pet. App. at 2-10.

The questions presented in this petition, is not whether Petitioner received all that Petitioner is

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[1] GMC filed its brief in the Special Court of Appeal asking it to affirm the Circuit Court for any reason.

legally entitled to receive, but whether the Special Court of Appeals of Maryland and the Maryland Court of Appeals both violated the Federal Constitution under 5th and 14th Amendments when they did not give the Petitioner the right to notice.

Finally, the Petitioner has now learned that on January 25th, 2009, Respondent improperly terminated the Petitioner. Due the Petitioner's Union of the Respondent, GMC, the Petitioner is now being reinstated as a disabled employee with GMC. Such wrongfully termination has caused Petitioner great hardship and pain to which Petitioner could no longer afford his pain medication. This Court should grant rehearing as a matter of justice in order to protect the rights of the Petitioner.

A. Damages to the Petitioner Caused By GMC

The Petitioner avers that he has been damaged from October 27th, 2009 to present as a direct result of the litigation tactics employed by the Respondent through litigation in this Court and the Courts of the State of Maryland. These damages are **$50,000,000.00** (Fifty Million Dollars). The Respondent has admitted to such damages due to its waiver filed with this Court and its default.

II. DISCUSSION

This Petition for Rehearing addresses one important Federal question that this Court should surly address. Pro se litigant should not be dined the opportunity to bring issues before this Court simply because this law Clerks recommends to this Court or fills that the issue raised by pro se parties are not important enough warrant this Court's consideration and time. Whatever process this Court use in order to screen petitions and applications in this Court, it should be done with the upmost caution and respect to pro se parties.

In *Betts* v. *Brady*, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595 (1954), this Court asserted that the denial of due process is to be tested by an appraisal of the totality of facts given in a case. That which constitute a denial of fundamental fairness and shocking to the universal sense of justice may, in other circumstances and in the light of other considerations which fall short of such denial. See, 316 U.S., at 462, 62 S.Ct., at 1256, 86 L.Ed. 1595. Under both the Fifth and Fourteenth Amendments to the U.S. Constitution, neither the federal government nor state governments may deprive any person *"of life, liberty, or property without due process of law."* Chief Justice William Howard Taft explained the purpose behind the clauses in *Truax* v. *Corrigan* 257 U.S. 317 (1921) as follows:

> "The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his

> life, liberty, property and immunities under the protection of the general rules which govern society. It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty, and property, which the Congress or the Legislature may not withhold."

In numerous decisions, this Court *"has held that the Due Process Clause of the Fifth Amendment forbids the Federal Government to deny equal protection of the laws."* e.g., Hampton v. Mow Sun Wong, 426 U.S. 88, 100, 96 S.Ct. 1895, 1903, 48 L.Ed.2d 495 (1976); Buckley v. Valeo, 424 U.S. 1, 93, 96 S.Ct. 612, 670, 46 L.Ed.2d 659 (1976); Weinberger v. Wiesenfeld, 420 U.S. 636, 638 n. 2, 95 S.Ct. 1225, 1228, 43 L.Ed.2d 514 (1975); *Bolling* v. *Sharpe*, 347 U.S. 497, 500, 74 S.Ct. 693, 694, 98 L.Ed. 884 (1954). *Vance* v. *Bradley*, 440 U.S. 93, 95 n. 1, 99 S.Ct. 939, 942, 59 L.Ed.2d 171 (1979). *"To withstand scrutiny under the equal protection component of the Fifth Amendment's Due Process Clause, 'classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives."* See, Craig v. Boren, 429 U.S. 190, 197, 97 S.Ct. 451, 456, 50 L.Ed.2d 397 (1976); *Califano* v. *Webster*, 430 U.S. 313, 316-317, 97 S.Ct. 1192, 1194, 51 L.Ed.2d 360 (1977).[2]

[2] The State Appellate Courts of this country properly share the responsibility for protecting the constitutional rights of those of disable persons such as the Petitioner in this case.

VII. ARGUMENT

The Respondent has already conceded through its wavier to respond to Petitioner's petition for certiorari as it did in the State Courts before the Maryland Special Court of Appeals that the Circuit Court for Baltimore City erred when it dismissed Petitioner's de novo appeal from the Maryland Worker's Compensation Commission.

The Respondent's filed wavier with this Court should clearly support all facts and arguments stated in Petitioner's petition. The Petitioner hereby moves this Court to adopt the facts and arguments stated in the Petitioner's petition for certiorari as true and correct due to the Respondent's waiver.

August 1st, 2008, without due process notice to the Petitioner, the Circuit Court held a hearing and dismissed Petitioner's petition for judicial review. See, Pet. Appx. at 5. Instead of reversing the Circuit Court for dismissing the case as untimely, the Special Court of Appeals erroneously affirmed the Circuit Court for what the Circuit Court stated in the transcript and not for what was actually ruled upon by the Circuit Court in its final order.

The real issue in this petition is whether the Special Court of Appeals violated the Fifth and the Fourteenth Amendment to the United States Constitution when the Special Court of Appeals erroneously affirmed the Circuit Court for a reason stated in the transcript contrary to what the Circuit Court decided in its final order of dismissal of Petitioner's case. This was at the appellate stage.

The Petitioner raises these important due process concerns under the Fifth and the Fourteenth Amendment to the United States Constitution. See, *Mapp* v. *Ohio*, 367 U.S. 643, 654-55 (1961).

The substantive element of the Due Process Clause protects certain rights not expressly mentioned in the Constitution, such as the right to prevent the State Courts from infringement upon the rights of the party to have a fair and final hearing. See *Planned Parenthood* v. *Casey*, 505 U.S. 833, 847-49, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992). In this case, the Special Court of Appeals affirmed the trial Court on a ground to which the Petitioner had no notice and this violates Petitioner's due process rights to notice. See, *Parratt* v. *Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981).

A. *Wavier Supports Petitioner's Claims*

The Respondent, General Motors Company's wavier to respond to Petitioner's claims in his petition for certiorari should clearly indicate that this Court has jurisdiction to hear this matter and that the constitutional violations stated herein accrued at the appellate stage of these proceedings.

The Special Court of Appeals of Maryland clearly violated the 5th, and 14th, Amendments to the United States Constitution when it denied the Petitioner the right to due process notice in this matter. The Petitioner had no remedy other than to petition for certiorari in the Maryland Court of Appeals which is the highest Court of that State. See, 28 U.S.C. § 1257(a).

The Petitioner never received a final order as to all issues in the case. The Special Court of Appeals of Maryland affirmed the Circuit Court for what was stated in the transcript of the final hearing and not for what was actually ruled upon by the Circuit Court in the final order of that Court. This violates the Due Process Clauses of the Constitution of the United States because Special Court of Appeals' opinion denies Petitioner of his right to properly appeal all issue in the case. The Petitioner was never given the right at the appellate stage to address his constitutional claims in the highest Court of the State pursuant to 28 U.S.C. § 1257(a).

The Petitioner could not appeal the issue that Special Court of Appeals rested its opinion on because Petitioner's appeal was limited to what the Circuit Court actually decided. Thus the Special Court of Appeals violated the Due Process Clauses of the Constitution of the United States because Special Court of Appeals opinion denies Petitioner of his right to properly appeal all issue in the case with notice. See, *Parratt* v. *Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981). The Circuit Court for Baltimore City erroneously made the wrong final determination that Petitioner's petition was untimely, when in fact, it was timely. The Circuit Court dismissed the action on this ground along. Petitioner appealed from this dismissal.

The Special Court of Appeals found and the Respondent conceded that Petitioner appeal was timely. However, instead of reversing the Circuit Court, the Special Court of Appeals affirmed the trial Court on the ground for what was stated by the Circuit Court in the transcript and not for what the Circuit Court actually ruled on.

This is contrary to the Federal Constitution, because Petitioner was denied his right to notice of a final order which covers all issues in the case so that he could appeal all issues in the final order. See, *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435-436, 102 S.Ct. 1148, 1157-1158, 71 L.Ed.2d 265 (1982).

B. *Courts of Appeals Violated Constitution*

Secondly, the Special Court of Appeals erred when it affirmed the Circuit Court for Baltimore City on the ground for what was stated in the transcript rather then what was rule upon by the Circuit Court in its final order thereby violating the 5th, and 14th, Amendments to the United States Constitution. The Court of Appeals cited this Court holding in *Waller v. Maryland Nat'l Bank*, 332 Md. 375 at 379 (1993) stating that *("when there is a conflict between the transcript of a trial and the docket entries, the transcript, unless shown to be in error, will prevail")*

The Maryland Court Appeals in *Waller* has never held that a transcript control over a final order of a trial Court. Thus the Special Court of Appeals has clearly misconstrued the holding in *Waller* in order to base its decision in Petitioner's appeals.

This Court has held in *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 13 (1978) that:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances to apprise interested parties of

the pendency of the action and afford them an opportunity to present their objections."

First, Respondent fails to address the issues presented in Petitioner's petition for certiorari. See, Pet. Cert. at p. (ii) (Questions Presented). Failure to address a properly file and timely petition means that the petition is unopposed as to the issues presented therein. Secondly, in Respondent answer to the petition for certiorari, Respondent shows that Petitioner did not receive total disability for all of his claims as agreed by the parties.

Therefore, it was clear that the Special Court of Appeals violated Petitioner's right to due process under the State and Federal Constitutions. See, *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 435-436, 102 S.Ct. 1148, 1157-1158, 71 L.Ed.2d 265 (1982) (post-deprivation remedies do not satisfy due process where deprivation is caused by established state procedures). This Supreme Court has interpreted those two clauses identically, as Justice Felix Frankfurter once explained in a concurring opinion: *"To suppose that due process of law"* meant one thing in the Fifth Amendment and another in the Fourteenth is too frivolous to require elaborate rejection. See, *Malinski v. New York*, 324 U.S. 401, 415 (1945), (Frankfurter, J., concurring).

VI. REASON FOR GRANTING REHEARING

This case presents this Court with a clear opportunity to address a due process concern that is exceedingly important and unprecedented. This question is of first impression, concerning constitutional law under both the 5th and 14th Amendments to United States Constitution. The question should be fully resolved by this Court and should be settled by this Court concerning the application of the 5th and 14th Amendments to the United States Constitution in the State Courts.

The Fourteenth Amendment prohibits the deprivation of liberty or property without due process of law. A due process claim is cognizable only if there is a recognized liberty or property interest at stake. See, *Board of Regents* v. *Roth*, 408 U.S. 564, 69 (1972). If the State Court acts repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or any treaty or statute in the State Court, and the State's highest Court has denied relief, Federal Law, 28 U.S.C. § 1257(a) authorized this Court to hear petitions for writ of certiorari. The reason for granting this Petition for Rehearing in this matter is because the Maryland Court of Appeals violated the due process provisions of the United States Constitution under both the Fifth and Fourteenth Amendments when it refused to address Petitioner's due process claims to the Special Court of Appeals of Maryland. See, Bouie v. City of Columbia, 378 U.S. 347, 353-354, 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964)

Due process is best defined in one word--fairness. Throughout the United States' history, its Constitution, Statutes and Case Law have all provided standards for fair treatment of citizens by federal, state and local governments. These standards are known as due process. When a person is treated unfairly by the government, including the State Courts, it is said to have deprived a person of due process of law. This case clearly fits within this Court's right to exercise jurisdiction under 28 U.S.C. § 1257(a) because the Maryland Court of Appeals denied certiorari to hear a Federal constitutional claim against the Special Court of Appeals of Maryland denying the Petitioner of due process of law when it erroneously affirmed the lower Circuit Court for Baltimore City on a ground to which Petitioner had no notice.

VI. CONCLUSION

The Petitioner has suffered through the proceedings in the State court system. This Court has the opportunity to address some important issue presented in Petitioner's petition. Petitioner is a disable person fighting for his rights to justice and this Court can remedy such in-justice done to the Petitioner in this matter. The Petitioner request that his petition for rehearing be GRANTED.

WHEREFORE, The Petitioner, Napoleon Spear hereby moves this Court to GRANT this Petition for Rehearing because of the gave denial of due process of law by both the Maryland Court of Appeals, the Special Court of Appeals of Maryland and the Circuit Court for Baltimore City. Petitioner is entitled to such relief as a matter of law.

This 26th, day of October 2010

Respectfully Submitted,

Napoleon Spear

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